

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

15-20442

Case No. _____

18 U.S.C. § 1349

18 U.S.C. § 1347

18 U.S.C. § 2

18 U.S.C. § 982

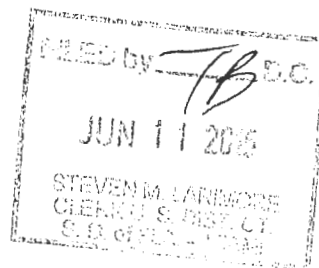
CR - DIMITROULEAS SNOW

UNITED STATES OF AMERICA

vs.

ADRIAN ARMAS and
ASLEY DEL SOL FERNANDEZ,

Defendant.



INDICTMENT

The Grand Jury charges that:

GENERAL ALLEGATIONS

At all times material to this Indictment:

The Medicare Program

1. The Medicare Program ("Medicare") was a federally funded program that provided free or below-cost health care benefits to certain individuals, primarily the elderly, blind, and disabled. The benefits available under Medicare were governed by federal statutes and regulations. The United States Department of Health and Human Services ("CMS"), oversaw and administered Medicare. Individuals who received benefits under Medicare were commonly referred to as Medicare "beneficiaries."

2. Medicare programs covering different types of benefits were separated into different program "parts." Part D of Medicare subsidized the costs of prescription drugs for Medicare beneficiaries in the United States. It was enacted a part of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 and went into effect on January 1, 2006.

3. In order to receive Part D benefits, a beneficiary enrolled in a Medicare drug plan. Medicare drug plans were operated by private companies approved by Medicare. Those companies were often referred to as drug plan “sponsors.” A beneficiary in a Medicare drug plan could fill a prescription at a pharmacy and use his or her plan to pay for some or all of the prescription.

4. A pharmacy could participate in Part D by entering a retail network agreement with one or more Pharmacy Benefit Managers (“PBMs”). Each PBM acted on behalf of one or more Medicare drug plans. Through a plan’s PBM, a pharmacy could join the plan’s network. When a Part D beneficiary presented a prescription to a pharmacy, the pharmacy submitted a claim to the PBM that represented the beneficiary’s Medicare drug plan. The PBM determined whether the pharmacy was entitled to payment for each claim and periodically paid the pharmacy for outstanding claims. The drug plan’s sponsor reimbursed the PBM for its payments to the pharmacy.

5. A pharmacy could also submit claims to a Medicare drug plan to whose network the pharmacy did not belong. Submission of such out-of-network claims was not common and often resulted in smaller payments to the pharmacy by the drug plan sponsor.

6. Medicare, through CMS, compensated the Medicare drug plan sponsors. Medicare paid the sponsors a monthly fee for each Medicare beneficiary of the sponsors’ plans. Such payments were called capitation fees. The capitation fees were adjusted periodically based on various factors, including the beneficiary’s medical condition. In addition, in some cases where a sponsor’s expenses for a beneficiary’s prescription drugs exceeded that beneficiary’s capitation fee, Medicare reimbursed the sponsor for a portion of those additional expenses.

7. Medicare, Medicare drug plan sponsors, and PBMs were “health care benefit program[s],” as defined by Title 18, United States Code, Section 24(b).

8. All Medicare beneficiaries are assigned a Health Insurance Claim Number (“HICN”) which is unique to each beneficiary.

Medicare Drug Plan Sponsors

9. United Healthcare Insurance Co. (“United”); Universal American Corp. (“Universal American”), and Wellcare Prescription Insurance, Inc. (“Wellcare”), were Medicare drug plan sponsors. CVS/Caremark was a PBM.

The Defendants, and a Related Entity

10. Astra Pharmacy, Inc. (“Astra”) was a Florida corporation, incorporated on or about May 4, 2010, that did business in Miami-Dade County, purportedly providing prescription drugs to Medicare beneficiaries. Astra’s principal place of business was 237 NW 12 Ave. Miami, Florida.

11. **ASLEY DEL SOL FERNANDEZ**, a resident of Miami-Dade County, was an owner of Astra and became its President, on or about May 4, 2010.

12. **ADRIAN ARMAS**, a resident of Miami-Dade County, was an owner of Astra and became its President and Registered Agent on or about March 24, 2011.

COUNT 1

Conspiracy to Commit Health Care Fraud and Wire Fraud (18 U.S.C. § 1349)

1. Paragraphs 1 through 12 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. Beginning in or around October of 2010, and continuing through in or around May of 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the

defendants,

**ADRIAN ARMAS and
ASLEY DEL SOL FERNANDEZ,**

did willfully, that is, with the intent to further the objects of the conspiracy, and knowingly combine, conspire, confederate and agree with each other and others known and unknown to the Grand Jury, to commit offenses against the United States, that is:

a. to knowingly and willfully execute a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, United, Universal American, Wellcare, and CVS/Caremark, and to obtain, by means of materially false and fraudulent pretenses, money and property owned by, and under the control of these health care benefit programs, in connection with the delivery of and payment for health care benefits, items, and services, in violation of Title 18, United States Code, Section 1347; and

b. to knowingly and with the intent to defraud devise and intend to devise a scheme and artifice to defraud and for obtaining money and property by means of materially false and fraudulent pretenses, representations, and promises, knowing the pretenses, representations, and promises were false and fraudulent when made, and for the purpose of executing the scheme and artifice, did knowingly transmit and cause to be transmitted by means of wire communication in interstate commerce, certain writings, signs, signals, and sounds, in violation of Title 18, United States Code, Section 1343.

Purpose of the Conspiracy

3. It was a purpose of the conspiracy for the defendants and their co-conspirators to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent claims to health care benefit programs; (b) concealing the submission of false and fraudulent claims to health care benefit programs, and the receipt and transfer of fraud proceeds; and (c) diverting the fraud proceeds for their personal use and benefit, and the use and benefit of others, and to further the fraud.

Manner and Means of the Conspiracy

The manner and means by which the defendants and their co-conspirators sought to accomplish the object and purpose of the conspiracy included, among other things, the following:

4. Co-conspirators obtained the names and HICNs of Medicare beneficiaries in order to submit false and fraudulent claims for prescription drugs purportedly provided to Medicare beneficiaries by Astra.

5. **ASLEY DEL SOL FERNANDEZ, ADRIAN ARMAS** and their co-conspirators submitted and caused the submission of claims, via interstate wire, that falsely and fraudulently represented that various health care benefits, primarily prescription drugs, were medically necessary, and provided by Astra to Medicare beneficiaries, when, in fact, they were not provided and were not medically necessary.

6. **ASLEY DEL SOL FERNANDEZ, ADRIAN ARMAS**, and their co-conspirators submitted false and fraudulent prescription drug wholesaler invoices to PBMs, including CVS/Caremark, when said PBMs were conducting audits of Astra, in order to conceal that Astra had not purchased sufficient quantities of prescription drugs to support the claims that Astra submitted to Medicare Drug Plan Sponsors..

7. As a result of such false and fraudulent prescription drug claims, Medicare, United, Universal American, and Wellcare, through their PBMs, made overpayments funded by Medicare to Astra, in the approximate amount of \$1.1 million.

8. **ASLEY DEL SOL FERNANDEZ, ADRIAN ARMAS** and their co-conspirators used the proceeds from the false and fraudulent Medicare Part D claims for their own use and the use of others, and to further the fraud.

All in violation of Title 18, United States Code, Section 1349.

COUNTS 2-5
Health Care Fraud
(18 U.S.C. § 1347)

1. Paragraphs 1 through 12 of the General Allegations section of this Indictment are re-alleged and incorporated by reference as though fully set forth herein.

2. From in or around October of 2010, and continuing through in or around May of 2012, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

ASLEY DEL SOL FERNANDEZ and
ADRIAN ARMAS,

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, a scheme and artifice to defraud a health care benefit program affecting commerce, as defined in Title 18, United States Code, Section 24(b), that is, Medicare, United, Universal American, Wellcare, and CVS/Caremark, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, these health care benefit programs.

Purpose of the Scheme and Artifice

3. It was a purpose of the scheme and artifice for the defendants and their accomplices to unlawfully enrich themselves by, among other things: (a) submitting and causing the submission of false and fraudulent prescription drug claims to health care benefit programs; (b) concealing the submission of false and fraudulent prescription drug claims to healthcare benefit programs, and the receipt and transfer of proceeds; and (c) diverting fraud proceeds for the personal use and benefit of themselves and others, and to further the fraud.

The Scheme and Artifice

4. The allegations contained in paragraphs 4 through 8 of the Manner and Means section of Count 1 of this Indictment are re-alleged and incorporated by reference as though fully set forth herein as a description of the scheme and artifice.

Acts in Execution or Attempted Execution of the Scheme and Artifice

7. On or about the dates set forth as to each count below, in Miami-Dade County, in the Southern District of Florida, and elsewhere, the defendants,

**ASLEY DEL SOL FERNANDEZ and
ADRIAN ARMAS,**

in connection with the delivery of and payment for health care benefits, items, and services, did knowingly and willfully execute, and attempt to execute, the above-described scheme and artifice to defraud health care benefit programs affecting commerce, as defined by Title 18, United States Code, Section 24(b), that is, Medicare, United, Universal American, Wellcare, and CVS/Caremark, and to obtain, by means of materially false and fraudulent pretenses, representations, and promises, money and property owned by, and under the custody and control of, said health care benefit programs, in that the defendant submitted and caused the submission of false and fraudulent claims seeking the identified dollar amounts, and representing that Astra

provided pharmaceutical items and service to Medicare beneficiaries pursuant to physicians' orders and prescriptions:

COUNT	BENEFICIARY	APPROX. DATE OF CLAIM	MEDICARE CLAIM NO.	DRUG & APPROX. AMT. PAID	MEDICARE DRUG PLAN SPONSOR
2	L.S.	09/22/2011	112002974229057998	Advair Disku AER 500/50; \$288	United
3	M.M.	12/07/2011	1000013417360821	Dovonex CRE .005%; \$550	Wellcare
4	N.M.	02/22/2012	111514016278046995	Soleraze-Gel 3% W-W; \$550	United
5	T.A.	04/17/2012	12087363704105499990	Abilify Tab 5mg; \$562	Universal American

In violation of Title 18, United States Code, Sections 1347 and 2.

FORFEITURE
(18 U.S.C. § 982 (a)(7))

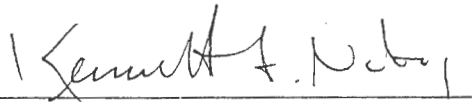
1. The allegations contained in this Indictment are re-alleged and incorporated by reference as though fully set forth herein for the purpose of alleging forfeiture to the United States of America of certain property in which the defendants **ASLEY DEL SOL FERNANDEZ** and **ADRIAN ARMAS** have an interest.

2. Upon conviction of any violation of Title 18, United States Code, Sections 1347 or 1349, as alleged in this Indictment, the defendant so convicted shall forfeit to the United States any property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of the offense pursuant to Title 18, United States Code, Section 982(a)(7).

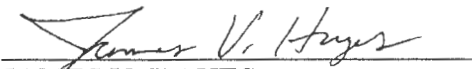
All pursuant to Title 18, United States Code, Section 982(a)(7), and the procedures set forth in Title 21, United States Code, Section 853, made applicable by Title 18, United States Code, Section 982(b).

A TRUE BILL

FOREPERSON



WIFREDO A. FERRER
UNITED STATES ATTORNEY



JAMES V. HAYES
ASSISTANT U.S. ATTORNEY